

ARIZONA JUDICIAL COUNCIL

Request for Council Action

**Date Action
Requested:**

June 19, 2017

**Type of Action
Requested:**

☒ Formal Action/Request
☐ Information Only
☐ Other

Subject:

Fair Justice Action Items
and Project Update

FROM:

Mr. Donald E. Jacobson, Senior Special Projects Consultant
Court Services Division
Administrative Office of the Courts.

DISCUSSION:

Mr. Jacobson will update the Arizona Judicial Council members on the implementation efforts of the Fair Justice Task Force that are currently underway. He will also present the following work products for the Council's consideration:

- Administrative Order: Presiding Judges Authority
- Administrative Order: Facilitating the Imposition and Collection of Court Ordered Financial Obligations
- Bench Cards:
 - Ability to Pay at Time of Sentencing in Criminal & Civil Traffic Cases
 - ARS § 13-810 Order to Show Cause Hearings (OSC), Lawful Collection of Legal Financial Obligations

RECOMMENDED COUNCIL ACTION:

To approve the proposed changes to the Presiding Judges Authority Administrative Order as presented.

To approve the proposed Administrative Order entitled: Facilitating the Imposition and Collection of Court Ordered Financial Obligation.

To approve the proposed Bench Card template modified for Arizona to be provided to judges for use when holding Ability to Pay at Time of Sentencing in Criminal & Civil Traffic Cases.

To approve the proposed Bench Card template modified for Arizona to be provided to judges for use when holding an ARS § 13-810 Order to Show Cause Hearings (OSC), Lawful Collection of Legal Financial Obligations.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
PRESIDING JUDGES AUTHORITY)	Administrative Order
)	<u>No. 2017-</u>
)	(Replacing Administrative
)	Order No. 2005-32 and
)	repealing Administrative
)	Order No. 91-40)

On May 16, 2005, by Administrative Order No. 2005-32, this Court repealed and replaced Administrative Rule V-A concerning the presiding judges of the superior court and Administrative Rule VII-A, Section 2 concerning presiding municipal court judges.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Administrative Rule V-A is repealed and replaced by the attached provision of this Order entitled Presiding Judge of the County that contains amendments based on the August 12, 2016 Fair Justice for All Task Force's recommendations and other amendments and updates of a technical nature.

IT IS FURTHER ORDERED that Administrative Rule VII-A is repealed and replaced by the attached provision of this Order entitled Presiding Judge - Municipal Court that also contains amendments based on the Fair Justice for All Task Force's recommendations and other amendments and updates of a technical nature.

IT IS FURTHER ORDERED repealing Administrative Order No. 91-40.

Dated this ____ day of June, 2017.

SCOTT BALES
Chief Justice

PRESIDING JUDGE OF THE COUNTY

A. Appointment. In each county with two or more superior court judges, the Supreme Court shall appoint one of such judges presiding judge. The presiding judge shall serve as the presiding judge of the county. Presiding judges may be reappointed.

~~B. Term of Office~~ ~~The presiding judge of the superior court in each county shall serve a term of five (5) years. The term of the presiding judge may be extended as determined by the Supreme Court.~~

CB. Duties

1. Presiding judges shall be the Chief Judicial Executive Officers of their respective counties and shall exercise administrative supervision over the superior court including all of its divisions and judges thereof in their counties. As a division of the superior court, the juvenile court is subject to this authority. Presiding judges shall also exercise administrative supervision over the clerk of the superior court; give direction to the court administrator; exercise administrative supervision over the justice of the peace courts in their counties; and exercise administrative supervision over the municipal courts in their counties. In counties with an associate presiding judge, and when so designated by the presiding judge, the associate presiding judge shall perform the duties of presiding judge of the superior court.
2. Administrative supervision of the superior court shall include authority to:
 - a. Determine the administrative structure of the superior court and all of its divisions and make regular and special assignments of all superior court judges and, unless otherwise directed by the Chief Justice and in cooperation with other presiding judges, assign judges with the county to other counties.
 - b. Exercise general supervision over the personnel of all divisions of the superior court.
 - c. Prescribe the powers and duties of the clerk of the court, in addition to those prescribed by law and the Supreme Court.
 - d. Appoint with the approval of the Supreme Court an associate presiding judge to act during the absence or unavailability of the presiding judge or as defined above. The presiding judges may delegate any and all of their powers to the associate presiding judge. The associate presiding judge shall serve at the pleasure of the presiding judge and shall exercise and discharge all powers and duties of the presiding judge, except appointing court commissioners or appointing judges permanently to special assignments. In order to facilitate the business of the court the presiding judges or associate presiding judge may delegate their duties to other judges.
 - e. Appoint a presiding judge of the juvenile court to perform under the administrative supervision of the presiding judge administrative duties as provided by statutes, rules, and administrative code provisions.

- f. Promulgate such local rules as a majority of the judges of the county may approve or as the Supreme Court shall direct.
 - g. Identify and develop programs that provide alternative methods for the resolution of civil disputes to which actions may be referred pursuant to the authority conferred by Rule 16(g) of the Arizona Rules of Civil Procedure, and promulgate such local rules as a majority of judges of the county may approve establishing and governing such alternative-dispute resolution programs.
 - h. Appoint a chief adult probation officer and provide advice and consent to the presiding judge of the juvenile court concerning the appointment of the juvenile court director.
 - i. Appoint a law library director.
 - j. Establish court security policies and procedures to provide a safe work environment for judicial employees, litigants and users of the court. Court security may include procedures, technology, security personnel or architectural features needed to provide a safe work environment. The presiding judge may also prohibit or regulate the possession of weapons or potential weapons in an area assigned to or controlled by the court.
3. Presiding judges may develop and implement judicial branch personnel systems for the courts in their counties.
4. Presiding judges shall determine the need for, and approve, the allocation of space and furnishings in the court building; the construction of new court buildings, courtrooms and related physical facilities; and the modification of existing court buildings, courtrooms and related physical facilities. This authority extends, but is not limited to, superior court and all of its divisions, clerk of the superior court, adult probation, justice courts and municipal courts.
5. Presiding judges shall meet on a regular basis with the presiding justices of the peace, presiding judges in the municipal courts, and justice court and municipal court administrators to discuss separation of powers, resources, use of technology and legal, administrative and other relevant issues to ensure proper functions and independence of the courts in the county.
6. ~~In counties with four or more justices of the peace, a presiding justice of the peace will be chosen by vote of the justices of the peace in the particular county, with the advice and consent of the presiding judge of the county. In case of a tie vote of the justices of the peace, the presiding judge of the county shall make the selection~~ In any county in which two or more justice courts are located, the justices of the peace of the county shall select a presiding justice of the peace. If the vote of the justices of the peace is tied, the presiding judge of the county shall cast the deciding vote.

7. Presiding judges shall appoint a superior court administrator and establish and maintain an administrative structure for the superior court and all of its divisions that provides administrative support, as the presiding judge deems necessary, in the areas of human resources, finance, technology, training and whatever other services are required for the administration of justice.
8. Presiding judges shall submit to the Board of Supervisors a coordinated budget for the superior court, clerk of the superior court, adult probation, juvenile court, juvenile probation and justice of the peace courts in their counties.
9. Presiding judges shall assist the presiding justice of the peace and presiding municipal court judges in coordinating uniform bond fine and deposit schedules.
10. Presiding judges shall obtain compliance with statistical reporting requirements from superior court, adult probation, juvenile court, justice courts and magistrate courts.
11. Presiding judges shall coordinate and implement compatible information systems and technology at the local level for all jurisdictions within the county, improve information sharing, and encourage projects which utilize technology to increase accessibility and improve efficiency and court management within their jurisdictions.
- ~~12.~~ Presiding judges shall submit a written report, not less than every 18 months, to the Supreme Court and Arizona Judicial Council concerning plans made and progress achieved toward implementation of Admin Order 91-40, Access to Court Services.
- ~~13~~12. Presiding judges shall approve and coordinate applications for grant funds from all courts in their respective counties.
- ~~14~~13. Presiding judges shall, yearly, certify compliance, non-compliance and exemptions with Educational Policies and Standards.
- ~~15~~14. Presiding judges shall approve procedures for implementing sexual harassment policies in the courts in their counties.
- ~~16~~15. Presiding judges shall approve plans to implement the policy on access to court services by persons with disabilities; for the courts in their respective counties and report such plans to the Supreme Court, pursuant to A.R.S. §41-1492.01.
- ~~17~~16. Presiding judges may delegate any part of this order, as appropriate, to the presiding justice of the peace and presiding municipal court judges.

PRESIDING JUDGE – MUNICIPAL COURT

A. Appointment. Presiding municipal court judges shall be selected in a manner provided by the charter or ordinances of the city or town, except in cities and towns which transfer that responsibility to the presiding judge of the county.

B. Term of Office – The presiding municipal court shall serve a term as established by the appointing authority.

C. Duties

1. Presiding municipal court judges shall perform administrative duties delegated to them by the presiding judge of the county. Such duties as are appropriate, may be delegated to a municipal court administrator.
2. Presiding municipal court judges may appoint a court administrator according to local charter or ordinance provisions.
3. Presiding municipal court judges shall supervise the administration of the judicial and internal administrative functions of the municipal court including:
 - a. Determining judicial assignment for each judge and, within guidelines established by city or town council, establishing and maintaining standard working hours and times to effectively discharge those assignments;
 - b. Being responsible for the supervision of judges and judicial and nonjudicial staff who directly affect the operation of the court; and
 - c. Delegating duties and responsibilities to judges, judicial and nonjudicial personnel as necessary.
4. Presiding municipal court judges shall work with the presiding judge of the county to assure selection of judges pro tempore in the municipal court is consistent with ~~Administrative Order No. 93-17~~ ACJA § 1-305: Selection of Special Judicial Officers.
5. In cities without a court administrator or where the duty is not delegated to one:
 - a. Presiding judges of the municipal court shall prepare the annual budget request for the court,
 - b. Presiding municipal court judges shall supervise the administration of the judicial and internal administrative functions of the municipal courts in a professional manner, using appropriate management techniques to organize and direct the efficient operation of the court in the following areas:
 - (1) Personnel
 - (2) Training
 - (3) Facilities

(4) Procurement

(5) Finance

That supervision includes supervision of the judges and judicial staff, and non-judicial staff, while they are performing work for the court.

- c. Presiding municipal court judges shall establish docketing, calendaring and case management policies and procedures.
- d. Presiding municipal court judges shall establish automation systems with the assistance and concurrence of the presiding judge of the county.
- e. With the assistance of the presiding judge of the county, presiding municipal court judges shall establish ~~bond~~ fine and deposit schedules in coordination with the justices of the peace in the county.
- f. Presiding municipal court judges shall comply with statistical reporting, jury management and records management policies and procedures established by the Supreme Court.
- g. Presiding municipal court judges may establish court security policies and procedures to provide a safe work environment for judicial employees, litigants and users of the court. Court security may include procedures, technology, security personnel or architectural features needed to provide a safe work environment. The presiding judge may also prohibit or regulate the possession of weapons or potential weapons in an area assigned to or controlled by the court.

In 1991, the Arizona Judicial Council recommended that court security standards developed by the Committee on Risk Management/Court Security be used as guidelines to implement court security policies and procedures. These standards are found in the Final Report, AJC Committee on Risk Management/Court Security, Appendix G, 1991.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
FACILITATING THE IMPOSITION AND)	Administrative Order
COLLECTION OF COURT ORDERED)	No. 2017 -
FINANCIAL OBLIGATIONS)	
)	

On March 3, 2016 the Fair Justice for All Task Force was established by Administrative Order No. 2016-16, on November 29, 2016 the term of the Task Force was extended by Administrative Order 2016-128, on October 17, 2016 the Arizona Judicial Council supported all the recommendations of the Fair Justice for All Task Force and approved the filing of Rule Change Petition R-16-041 and the inclusion of legislative proposals for the Arizona Judicial Council package in 2017, both of which supported the recommendations set forth by the Task Force,

Therefore, pursuant to Article II, Section 18, and Article VI, Section 3, of the Arizona Constitution, and in further support of the recommendations of the Fair Justice for All Task Force and the actions taken by the Arizona Judicial Council,

IT IS ORDERED that all courts in the State of Arizona make an effort to help people comply with court-imposed obligation both the process and manner in which they are imposed, collected and paid. The elements of this process should include that:

1. Courts shall make available a time payment process for those who are financially unable to pay their court ordered financial obligation on the day in which it is imposed, this is inclusive of payments due on both criminal and civil traffic violations.
2. Courts shall accept the following forms of payment for a court ordered financial obligation:
 - a. Cash;
 - b. Credit/debit card;
 - c. Cashier's check or other financial institution generated fund transfer instrument;
 - d. Money order;

And may also accept as a form of payment for a court ordered financial obligation:

- e. Personal check;
- f. Electronic Fund Transfer (EFT) or electronic payment such as, but not limited to and electronic check and/or direct deposits;
- g. Online transaction or electronic transaction conducted such as, but not limited to, by telephone (IVR), internet or world wide web;
- h. Other secure payment processes established and compliant with the Minimum Accounting Standards.

Some forms of payment may be subject to reasonable hold periods for clearance of funds as determined by local practice.

3. Courts shall have a procedure to determine an individual's ability to pay. This procedure should be applicable at the original imposition of a financial obligation, at any Order to Show Cause Hearing that includes a financial obligation or at any other appropriate time and may provide relief to those who have been determined unable to pay the full obligation amount by providing:
 - a. Credit for time served in a detention facility;
 - b. Credit for the performance of community restitution;
 - c. Credit for a manifest hardship that impacts their ability to pay;
 - d. Other credit as the court determines for completion of counseling, assessment, an educational program or for other efforts on the part of the individual that the court deems beneficial for the individual's rehabilitation or in improving their ability to pay restitution.
4. Courts shall make every effort to provide alternatives for the payment of financial obligations including the provision of community restitution, specialty court programs, diversion programs and any other program that is deemed beneficial for the administration of justice.

Dated this ____ day of _____, 2017.

SCOTT BALES
Chief Justice

BENCH CARD FOR ABILITY TO PAY AT TIME OF SENTENCING IN CRIMINAL AND CIVIL TRAFFIC CASES

Court-ordered legal financial obligations (LFOs) include all local or State, discretionary or mandatory fines, penalties, costs, fees, surcharges, assessments, restitution and other court ordered financial sanctions. These sanctions may be ordered in criminal cases and civil traffic cases.

Assessment of a defendant's ability to pay may be conducted by court personnel, performing verification through appropriate tools or by the judicial officer posing questions to the defendant.

In criminal cases, a court must impose "the full amount of the economic loss to the victim as determined by the court and in the manner as determined by the court or the court's designee," as required by ARS §§13-603(C), and 13-804(C)&(E). Restitution is exempt from any payment alternatives imposed for other types of financial obligations, but may be the subject of a time payment plan.

Step 1 – Application of credits

- A. Apply Credit for Time Served if applicable (§31-145).
- B. Apply Credit for Community Restitution if applicable and when allowed. (§13-824)

Step 2 – Defendant Self-declaration

- A. "Can you pay this in full today?"
- B. "How much can you pay today?"

Step 3 – Determination of Eligibility for Fine Reduction

- A. Affidavit by defendant to claim a hardship.
- B. Confirmation of hardship by:
 - 1. Proof that defendant receives income-based public assistance
 - 2. DES eligibility check
 - 3. Automated income check
 - 4. Defendant's affidavit or response to questions under oath

Step 4 – Granting a Hardship Mitigation

At sentencing, the judge may impose a fine amount that is less than the court's presumptive fine amount, when the judge deems it to be appropriate and as allowed by law. Consider income as a percentage of the Federal Poverty Level (FPL) based on household size. Consider:

- A. 25% mitigation if the household income is between 200% and 130% of FPL;
- B. 50% mitigation if the household income is less than 130% of FPL, or receipt of income-based public assistance.

Step 5 – Payment

- A. Initial payment (what can be paid today)
- B. Establishment of payment plan for the balance owed
- C. Community restitution in lieu of monetary payment, if permitted by ARS §13-824

2017 Federal Poverty Level (FPL) Income Based on Family Size

Family Size	130% of FPL	200% of FPL	Family Size	130% of FPL	200% of FPL
Individual	\$15,678	\$24,120	Household of 4	\$31,980	\$49,200
Household of 2	\$21,112	\$32,480	Household of 5	\$37,414	\$57,560
Household of 3	\$26,546	\$40,840	Household of 6	\$42,848	\$65,920

BENCH CARD FOR ABILITY TO PAY AT TIME OF SENTENCING IN CRIMINAL AND CIVIL TRAFFIC CASES

The Court may examine the following factors to help determine ability to pay.

- a. Whether defendant receives income-based public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), veterans' disability benefits, or other state based benefits provided through the Arizona DES. (All such benefits are not subject to attachment, garnishment, execution, levy, or other legal process);
- b. Income, including whether income is at or below 130% or between 130% and 200% of the Federal Poverty Level (FPL) (current guidelines available at: <https://aspe.hhs.gov/poverty-guidelines>);
- c. Financial resources, assets, financial obligations, and dependents;
- d. Whether the defendant is homeless, incarcerated, or resides in a mental health facility;
- e. Basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and child support;
- f. The defendant's efforts to acquire additional resources, including any permanent or temporary limitations to secure paid work due to disability, mental or physical health, homelessness, incarceration, lack of transportation, or driving privileges;
- g. Other LFOs owed to the court or other courts;
- h. Whether LFO payment would result in hardship to the defendant or his/her dependents; and
- i. Any other special circumstances that may bear on the defendant's ability to pay.

BENCH CARD FOR ARS §13-810 ORDER TO SHOW CAUSE HEARINGS (OSC), LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS

Court-ordered legal financial obligations (LFOs) include all local or State, discretionary and mandatory fines, costs, fees, surcharges, assessments, restitution and other court ordered financial sanctions in criminal cases. Willful failure to comply with court-ordered LFOs may result incarceration, except in civil traffic cases.¹

A court may not incarcerate a defendant for nonpayment of a court-ordered legal financial obligation unless the court holds a hearing and makes one of the following findings:

1. The failure to pay was willful and not due to an inability to pay; or
2. The failure to pay was due to an intentional failure to make bona fide efforts to pay.

To make the determination of willfulness, the court should:

1. Confirm that adequate notice of the hearing to determine ability to pay was provided.

Notice should include the following information:

- a. Hearing date and time;
- b. Total amount claimed due;
- c. That the court will evaluate the defendant's ability to pay at the hearing;
- d. That the defendant should bring any documentation or information the court should consider in determining ability to pay;
- e. That incarceration may result if the court finds that the defendant had the ability to pay and willfully refused; and
- f. That a defendant unable to pay can request payment alternatives, including, but not limited to, community restitution or a time payment plan.

2. Provide meaningful opportunity to explain at the hearing.

The defendant must have an opportunity to explain:

- a. Whether the amount due is incorrect; and
- b. The reason(s) for any nonpayment (e.g., inability to pay).

3. The following are factors the court should consider to determine willfulness

- a. Whether defendant is receiving income-based public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), veterans' disability benefits, or other state based benefits provided through the Arizona DES. (All such benefits are not subject to attachment, garnishment, execution, levy, or other legal process)
- b. Income, including whether income is at or below 130% of the Federal Poverty Level (FPL);²
- c. Financial resources, assets, financial obligations, and dependents;
- d. Whether the defendant is homeless, incarcerated, or resides in a mental health facility;
- e. Basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and child support;
- f. The defendant's efforts to acquire additional resources, including any permanent or temporary limitations to secure paid work due to disability, mental or physical health, homelessness, incarceration, lack of transportation, or driving privileges;
- g. Other LFOs owed to the court or other courts;
- h. Whether LFO payment would result in hardship to the defendant or his/her dependents; and
- i. Any other special circumstances that may bear on the defendant's ability to pay.

2017 FPL Income Based on Family Size

Family Size	130% of FPL	Family Size	130% of FPL
Individual	\$15,678	Household of 4	\$31,980
Household of 2	\$21,112	Household of 5	\$37,414
Household of 3	\$26,546	Household of 6	\$42,848

¹ Order to Show Cause hearings under ARS §13-810 are not used in civil traffic cases.

² U.S. Dep't of Health & Human Servs., Poverty Guidelines, Jan. 26, 2017, <https://aspe.hhs.gov/poverty-guidelines>

BENCH CARD FOR ARS §13-810 ORDER TO SHOW CAUSE HEARINGS (OSC), LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS

4. At the hearing, the court should find on the record:

- a. A determination of willfulness or intentional failure to make bona fide efforts to pay.
- b. Any fine payment alternatives imposed in 5 below.

5. Consider alternative sanctions for both those who have been found willful and not willful of nonpayment pursuant to ARS §13-810(D)&(E).

The options for those defendants who willfully failed to pay, or intentionally failed to make a good faith effort to pay, after a finding of contempt include:

- a. Order the defendant to perform community restitution;
- b. Enter a criminal restitution order pursuant to ARS §13-805;
- c. Enter a writ of criminal garnishment pursuant to ARS §13-812. This does not discharge a defendant who is incarcerated for nonpayment until the amount owed or a portion of the amount owed is paid;
- d. Order defendant incarcerated in the county jail until the LFO or a specified portion of it is paid.
- e. Refer for probation revocation conducted under Rule 27 of the Rules of Criminal Procedure. Probation revocation cannot be determined at a §13-810 OSC hearing.

The options for those defendants who were not willful in nonpayment, or have made a good faith effort to pay include:

- a. Re-establish any original agreement regarding the payment of the LFO;
- b. Modify the manner in which the amount owed is to be paid. This may include an extension of time to pay, the establishment or the modification of a time payment plan, ordering community restitution or allowing credit for community restitution when permitted by ARS §13-824;
- c. Enter a criminal restitution order pursuant to ARS §13-805;
- d. Enter a writ of criminal garnishment pursuant to ARS §13-812. This does not discharge a defendant who is incarcerated for nonpayment until the amount owed or a portion of the amount owed is paid.

Courts must impose "the full amount of the economic loss to the victim as determined by the court and in the manner as determined by the court or the court's designee," as required by ARS §§13-603(C) and 13-804(C)&(E). Restitution is exempt from any payment alternatives imposed for other types of financial obligations, but may be the subject of a time payment plan.